Office - Supreme Court, U.S.
FILED
MAY 25 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-2178

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

PATRICIA THOMPSON,
EDDIE THOMPSON, JR.,
Plaintiffs-Petitioners,

vs.

MR. A. T. WOOD,
Defendant-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PATRICIA THOMPSON, Pro Se
P.O. Box 1221
Covington, Kentucky 41012
(606) 491-6278

EDDIE THOMPSON, JR., Pro Se
P.O. Box 1221
Covington, Kentucky 41012
(606) 491-6278

I hereby certify that 3 copies of the foregoing Petition have been served upon Mr. Martin J. Huelsmann, Assistant County Attorney, 304 City-County Building, Covington, Kentucky 41012, and Mr. Steve Beshear, Kentucky Attorney General, Capitol Building, Frankfort, Kentucky by the United States mail this ..... day of May, 1982.

.....
PATRICIA THOMPSON, Pro Se

.....
EDDIE THOMPSON, JR., Pro Se

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

QUESTION PRESENTED

If a County *Clerk* knowingly accepts and records a deed in violation of State law to deprive a person of his constitutional rights (due process of law), is the County *Clerk* liable for damages?

INDEX

	Page
QUESTION PRESENTED	1
OPINION BELOW	1
JURISDICTION	2
STATEMENT	2
REASONS FOR GRANTING WRIT	5
CONCLUSION	8

APPENDIX

Order Denying Petition for Rehearing	1a
Order Affirming Trial Court	3a
Order Denying Motion for Reconsideration	5a
Judgment, Trial Court	6a
Memorandum Opinion	7a
Unpublished Decision of the Kentucky Court of Appeals Affirming Dismissal with Prejudice of the Bank's Possessory Action	9a

Citations

	Page
Anderson National Bank v. *Luckett*, 321 U.S. 233	5
Barr v. *Matteo*, 360 U.S. 564, 569	5
Bradley v. *Fisher*, 80 U.S. (WALL) 335, 20 LEd 646 (1872)	6
Conley v. *Gibson*, 355 U.S. 41	5
Davis v. *Passman*, 442 U.S. 228	6
Dennis v. *Sparks*, 101 SCt 183	7
Foman v. *Davies*, 371 U.S. 178	5
Gomez v. *Toledo*, 446 U.S. 635, 64 LEd 2d 572, 100 SCt 1920	7
Hovey v. *Elliot*, 42 LEd 215	5
Imbler v. *Pachtman*, 424 U.S. 409, 421, 47 LEd 2d 128, 96 LEd 2d 984	6, 7
Monroe v. *Pape*, 367 U.S. 167, 5 LEd 2d 492, 81 SCt 473	5
Morgan v. *Wickliffee*, 2f K.L.R. 1039, 70 S.W. 680 (1902)	6
Procunier v. *Navarette*, 434 U.S. 555, 55LEd 2d 24, 98 SCt 855	6
Sparks v. *Duvall County Ranch Co., Inc.*, 604 F2d 978 (1979)	7
Springfield Fire and Marine Ins. Co. v. *Phillips*, 16 KLR (Abstract) 390	6

Page

Stump v. *Sparkman*, 435 U.S. 349 (1979) 6

Williams v. *Woods*, 612 F 2d 982 (1980) 5

Wirth v. *Surles*, 562 F 2d 319 5

Miscellaneous:

28 U.S.C. 1254 (1) 2

K.R.S. 381.240 ..... 2, 3, 5, 7

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. ————

PATRICIA THOMPSON,
EDDIE THOMPSON, JR.,

Plaintiffs-Petitioners,

vs.

MR. A. T. WOOD,

Defendant-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners, Patricia and Eddie Thompson, Jr., respectfully pray that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above styled case on January 25, 1982; Petition for Rehearing denied on March 22, 1982.

OPINION BELOW

The Order of the Court of Appeals is annexed to this Petition as Appendix B, Page 3a. The Order denying Petition for Rehearing is annexed as Appendix A, Page 1a. The Memorandum Opinion and Judgment of the District

Court is annexed as Appendix E and D, Pages 6a-7a, respectively. The Order denying Motion for Reconsideration is annexed as Appendix C, Page 5a.

JURISDICTION

The Order of the Court of Appeals is annexed to this Petition as Appendix B, Page 3a. A timely Petition for Rehearing was denied on March 22, 1982, Appendix A, Page 1a, and this Petition for Certiorari was filed within ninety days of that date.

The Court's Jurisdiction is invoked pursuant to 28 U.S.C. 1254 (1).

STATEMENT

The instant action is a Pro Se complaint alleging, inter alia, that Mr. A. T. Wood, Kenton County Clerk, wilfully accepted and recorded deeds (in violation of K.R.S. 381.-240) to real property in possession of Petitioners (Eddie and Patricia).

Mr. Wood's purpose in accepting and recording a deed from Peoples Liberty Bank (July 27, 1978) to Mr. Slukich was to facilitate the bringing of criminal charges against Petitioner (Eddie Thompson) by Mr. Richard Slukich so that the Bank could gain possession of property the bank allegedly foreclosed on illegally.

Petitioner (Eddie) was involved in an election contest (1975), wherein Petitioner Eddie had alleged, inter alia, that Mr. Wood had destroyed the original return sheets of said election (within 2 weeks of said election).

Peoples Liberty Bank and their attorney (1976) had initiated an alleged illegal foreclosure proceeding against Petitioners (not at issue here).

Concurrently and during the foreclosure proceeding, the Bank and their attorney caused a number of unfounded criminal actions to be brought against Petitioners, to prevent Petitioners (at that time) from being able to properly defend the foreclosure action.

Among these criminal charges was the charge of criminal trespass brought by Mr. Richard Slukich, ex parte Peoples Liberty Bank.

The Bank gave Mr. Slukich a deed while Petitioners were living in their home and the foreclosure proceedings were going on. Mr. Wood accepted and recorded this deed (in violation of K.R.S. 381.240) to aid and assist in taking of personal and real property without due process of law.

After the foreclosure and in order to gain possession of Petitioners real property, the Bank filed a Forcible Detainer (1977) in the Kenton District Court, where a Writ issued in favor of the Bank. Petitioners (Thompsons) appealed to the Kenton Circuit Court. The Writ never executed.

Subsequently, the Bank moved the Kenton Circuit Court to dismiss the Appeal and their original claim (for possession) with prejudice, which was done. Appendix F, Page 9a.

Recognizing that they had lost their alleged right to possession of Petitioner's (Thompsons) home, the Bank had the Judge in the foreclosure action to sign an order and writ of possession (April 12, 1978) without notice to Petitioners (Thompsons).

While Petitioners were absent from their home, on July 19, 1978, Sheriff Deputies and Police Officers (Police Officers hired by the Bank at $5.00 an hour) executed the void "Order and Writ of Possession." Police Officers

(hired by the bank at the rate of Five Dollars ($5.00) an hour) occupied Petitioner's (Thompsons) home 24 hours a day until July 27, 1978, when friends of the Thompsons petitioned the Mayor and City Commissioners to get the police officers out of the Thompson's home.

Recognizing this unlawful seizure had failed, the Bank gave Mr. Slukich a deed to Petitioner's home for ONE DOLLAR ($1.00) and other good and valuable consideration. The consideration being that Mr. Slukich would maintain and prosecute criminal charges against Petitioner (Eddie), not at issue here.

With the foregoing knowledge, Mr. A. T. Wood accepted and recorded a deed from the Bank to Mr. Richard Slukich.

The record in the foreclosure proceeding (Kenton Circuit No. 31053) have been requested by the U.S. District Court in another proceeding in that Court.

The alleged illegal foreclosure is currently under attack in State court (not at issue here).

There has been no hearing in the Trial court or the Court of Appeals.

The dismissal by the Trial court is grounded on the assumption that Mr. Wood has unqualified judicial immunity (clearly erroneous). The Court of Appeals affirmed.

REASONS FOR GRANTING THE WRIT

The right of a litigant to be heard is one of the fundamental rights of due process of law. A denial of that right requires a reversal. *Hovey* v. *Elliot,* 42 LEd 215; *Anderson National Bank* v. *Luckett,* 321 U.S. 233.

The gravaman of the complaint here is that Respondent violated State Law (K.R.S. 381.240) in order to deprive Petitioners (Thompsons) of their real property (home) without due process of law.

Respondent's (Mr. Wood) claim that he had a right to record a deed from the Bank to Mr. Slukich is not borne out by the record.

From the Judgment of the Kentucky Court of Appeals concerning property the deed conveyed, it is obvious the Bank had nothing to sell Mr. Richard Slukich and particularly so while Petitioners were in residence and fighting the voidable foreclosure sale.

Where violation of State Law causes deprivation of rights protected by the Constitution and Statutes of the United States, cause of action is stated under 42 U.S.C. 1983. *Wirth* v. *Surles,* 562 F 2d 319.

When legal rights have been invaded under color of law, a claim is stated. *Monroe* v. *Pape,* 367 U.S. 167.

A complaint should not be dismissed if recovery can be had under any theory. *Conley* v. *Gibson,* — U.S. 41 (1957), *Foman* v. *Davies,* 371 U.S. 178 (1962).

Dismissal of an action on the basis of immunity is proper only when the official is absolutely immune, not when he has qualified immunity. *Williams* v. *Woods,* 612 F 2d 982 (1980) 5th Cir., *Barr* v. *Matteo,* 360 U.S. 564, 569.

There is no question that the Bank received a Judgment (bad or good) foreclosing Petitioner's (Thompsons) mortgage, and that the Bank lost the possessory action. Appendix F, Page 9a.

But, the foreclosure action *did not* divest title or confer possession. *Springfield Fire and Marine Ins. Co.* v. *Phillips,* 16 K.L.R. (abstract) 390; *Morgan* v. *Wickliffe,* 24 K.L.R. 1039, 70 S.W. 680 (1902).

Thus, the ultimate question here is simply: When Mr. A. T. Wood, pursuant to State Law accepted and recorded a deed to deprive Petitioners (Thompsons) of real property lacking due process of law, was Mr. A. T. Wood liable for damages sustained by Petitioners (Thompsons).

42 U.S.C. 1983 provides for a general right to sue for such invasion, and federal court may use any available remedy to make good the wrong done. *Davis* v. *Passman,* 442 U.S. 228.

Findings of immunity have thus been predicated upon a considered inquiry into the immunity historically accorded the relevant official at common law and the interest behind it. *Bradley* v. *Fisher,* 80 U.S. (WALL.) 335 (1872); *Imbler* v. *Pachtman,* 424 U.S. 409; *Procunier* v. *Navarette,* 434 U.S. 555; *Stump* v. *Sparkman,* 435 U.S. 349 (1979).

From our inquiry it may be concluded that the absolute immunity that Judges enjoy exist for the benefit of the judicial system and of the public and not for the Judge (or Court *Clerks*).

The rule of judicial immunity from damages, with its single bright line exception is as broad, but not broader than is necessary. Even so, the rule is a harsh one, laden

with potential for unredressed wrong. As such the scope of judicial immunity should not be extended beyond that necessary to preserve the Judge's independence of mind and judgment, for it is upon the need to protect these, and on that alone, that rule rests. *Sparks* v. *Duval County Ranch Co., Inc.,* 604 F 2d 978 (1979); *Dennis* v. *Sparks,* 101 SCt 183.

The applicable test for determining establishment of qualified immunity under 42 U.S.C. 1983 that is available to executive officers for acts performed in the course of his official conduct focuses upon not only whether the official had an objectively reasonable belief that his conduct was lawful, but also upon whether the official was acting sincerely and with a belief that he was doing right. *Gomez* v. *Toledo,* 446 U.S. 635.

The fate of an official with qualified immunity depends upon the circumstance and motivations of his actions, as established by evidence at the trial. *Imbler* v. *Pachtman,* 424 U.S. 409.

K.R.S. 381.240 states, "No county clerk or other county or state officer shall officially certify to any abstract or statement of title to lands in this state, where such lands are in the actual possession of another than the person or corporation shown to be the owner of the abstract or certificate, when such person in possession is claiming such lands under title adverse to that shown in such abstract or certificate."

The question of judicial immunity for a clerk who has committed a constitutional tort is also raised in 81-1525 styled *Eddie Thompson, Jr.* v. *Mary Ann Woltenberg.*

CONCLUSION

The decisions of the lower courts are clearly erroneous and should be reversed.

PATRICIA THOMPSON, Pro Se
P.O. Box 1221
Covington, Kentucky 41012
(606) 491-6278

EDDIE THOMPSON, JR., Pro Se
P.O. Box 1221
Covington, Kentucky 41012
(606) 491-6278